



Original: **English**

No.: **ICC-01/14-02/18**

Date: **15 February 2019**

PRE-TRIAL CHAMBER II

Before: Judge Antoine Kesia-Mbe Mindua, Presiding Judge
Judge Tomoko Akane
Judge Rosario Salvatore Aitala

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

IN THE CASE OF THE PROSECUTOR V. PATRICE-EDOUARD NGAÏSSONA

PUBLIC

Urgent Request to Assign a Duty Counsel

Source: Office of Public Counsel for the Defence

Document to be notified in accordance with regulation 31 of the Regulations of the Court to:

The Office of the Prosecutor

Ms Fatou Bensouda

Mr James Stewart

Counsel for the Defence

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

The Office of Public Counsel for Victims

The Office of Public Counsel for the Defence

Mr Xavier-Jean Keïta

Ms Marie O'Leary

States Representatives

Trust Fund for Victims

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Mr Esteban Peralta Losilla

Victims and Witnesses Unit

Detention Section

Mr Paddy Craig

**Victims Participation and
Reparations Section**

Other

1. On 23 January 2019, Mr Patrice-Edouard Ngaïssona was surrendered into the custody of the ICC. He was assigned Counsel, Mr Eric Plouvier, the following day.¹
2. On 6 February 2019, Mr Plouvier sought to withdraw from the case citing inability to handle the case with the requisite due diligence and a potential conflict of interest with his FIDH functions.²
3. On 7 February 2019, Pre-Trial Chamber II granted his request holding: “the withdrawal shall take effect as of 12 February 2019, after Mr Plouvier has submitted the requested observations concerning the joinder of the cases against Patrice-Edouard Ngaïssona”.³ In the same Decision, the Registrar was ordered “to take immediate steps to facilitate the selection and appointment of new counsel for Patrice-Edouard Ngaïssona”.⁴
4. As of the time of this filing, there is no notification of filing of a newly assigned Counsel to protect Mr Ngaïssona’s interests.

I. PRELIMINARY ISSUE – OPCD MANDATE (RoC 77)

5. For the following submissions, the OPCD references its mandate as promulgated by the Judges of the ICC in *Regulations of the Court* (RoC) 77.⁵ Given that a situation has arisen at the ICC triggering the “needs of the defence in ongoing proceedings”⁶ and are “on behalf of the person entitled to legal assistance when defence counsel has not been secured”⁷, the OPCD respectfully requests that Pre-Trial Chamber II accept these submissions pursuant to RoC 77(4)(a) and/or (d).

¹ ICC-01/14-02/18-13.

² ICC-01/14-02/18-26-Corr.

³ ICC-01/14-02/18-30, para. 6 and relief.

⁴ *Ibid.*, para. 7 and relief.

⁵ RoC 77 was originally adopted by the Judges of the Court on 26 May 2004. It was subsequently amended by the Judges on 2 November 2011, with entry into force on 29 June 2012.

⁶ RoC 77(4)(a).

⁷ RoC 77(4)(d).

II. REQUEST

6. Article 55 of the Rome Statute guarantees a number of rights held by a suspect before the ICC, including the right “[t]o have legal assistance of the person’s choosing, or, if the person does not have legal assistance, to have legal assistance assigned to him or her, in any case where the interests of justice so require”.⁸ This is supplemented by several other texts of the Court, including the right of the Chambers to “appoint duty counsel in situations of urgency when the person’s own counsel is unavailable or when it is necessary to appoint duty counsel in the interests of justice”.⁹ Further, the *Regulations of the Registry* (RoR) indicate that “[a] detained person shall receive assistance to enable him or her to exercise his or her rights in connection with his or her trial at the Court”.¹⁰
7. The texts of the ICC are based on and reinforced by several human rights instruments that guarantee a detained person the right to the assistance of a Counsel. The Human Rights Council has emphasized the need to ensure access to a lawyer “from the outset of custody”.¹¹ The Human Rights Committee has stated that the “right to communicate with counsel requires that the accused is granted prompt access to counsel”.¹² The Robben Island Guidelines, which were adopted by the African Commission of Human and People’s Rights, provides for the right to access to a lawyer “from the moment when [persons are] first deprived of their liberty”.¹³ The European Directive on Access to a Lawyer provides that “suspects or accused persons shall have access to a lawyer without undue delay” and that, “[i]n any event, suspects or accused persons shall have access to a lawyer [...] without undue delay after deprivation of liberty”.¹⁴
8. While the OPCD appreciates that it may take time to select and assign a permanent Counsel of his choosing, there is absolutely no reason that Mr Ngaïssona should not

⁸ Article 55(2)(c).

⁹ RoC 73(3).

¹⁰ RoR 151(1).

¹¹ UN, Resolution adopted by the Human Rights Council on 24 March 2016, (2016), UN Doc A/HRC/RES/31/31, §7.

¹² UN Human Rights Committee, General comment no. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, 23 August 2007, UN Doc CCPR/C/GC/32.

¹³ African Commission on Human and People’s Rights, Resolution on Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa, The Robben Island Guidelines, 2003, Guideline 20.

¹⁴ Official Journal of the European Union, Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013, Article 3(1).

have a Duty Counsel assigned to protect his interests in the interim. This is a minimum guarantee under human rights law to ensure that he remains aware of his rights as a detained person and has instruction as to how to exercise them.

9. Given the fact that the case has advanced into a stage of substantive litigation before the Pre-Trial Chamber, the OPCD submits that it could create a conflict of interest for a member of our Office to be assigned in such role of Duty Counsel and would suggest that the Duty Counsel roster held by the Counsel Support Section could be used for this purpose. However, should the Chamber choose to assign a Counsel of OPCD as Duty Counsel to protect his interests, pursuant to RoC 73 and 77(4)(e), until a permanent Counsel is assigned, the Office asks that it be done with the limited mandate of protecting his human rights and interests as a detained person and not to enter into the merits of the case.

III. RELIEF REQUESTED

For the foregoing, the OPCD respectfully requests the Pre-Trial Chamber to:

- Accept these observations pursuant to RoC 77(4)(a), as ‘needs of the Defence in ongoing proceedings’, or RoC 77(4)(d), ‘on behalf of the person entitled to legal assistance when defence counsel has not been secured’;
- Order the Registrar to immediately, without any delay, assign a Duty Counsel, pursuant to RoC 73, to Mr Ngaïssona to protect his interests and human rights.



Xavier-Jean Keïta
Principal Counsel of the OPCD

Dated this, 15 February 2019

At The Hague, The Netherlands